

**To:** Neugeboren, Steven[Neugeboren.Steven@epa.gov]  
**From:** Levine, MaryEllen  
**Sent:** Thur 1/23/2014 6:41:00 PM  
**Subject:** FW: Water Law News for January 23, 2014

You should look at the inside EPA article on 316(b).

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**From:** Turley, Jennifer

**Sent:** Thursday, January 23, 2014 10:13 AM

**To:** Allnutt, David; Bogoshian, Matthew; Brown, Samuel; Chester, Steven; Cozad, David; Dierker, Carl; Dolph, Becky; Field, Stephen; Frankenthaler, Douglas; Frey, Bert; Gable, Kelly; Giles-AA, Cynthia; Harrison, Ben; Helwig, Amanda; Isales, Lydia; Jackson, Brooke-Sidney; Kaplan, Robert; Mackey, Cyndy; Michaud, John; Morgan, Jeanette; Moyer, Robert; Mulkey, Marcia; Muller, Sheldon; Murray, Suzanne; Nalven, Heidi; Rodrigues, Cecil; Ryan, Mark; Schaaf, Eric; Shapiro, Mike; Shepherdson, Melanie; Siegal, Tod; Silver, Meg; Starfield, Lawrence; Stern, Allyn; Theis, Joseph; Wade, Alexis; Walker, Mike; Ward, W. Robert; Yager, Scott; OGC WLO; Conger, Nick

**Subject:** Water Law News for January 23, 2014



**Water Law News**

**for January 23, 2014**

# **Bloomberg BNA Daily Environment Report™**

## *California*

### Governor Says Effects of Drought, Climate Change Key Challenges for State in 2014

Mitigating the effects of California's drought and addressing climate change are among the key challenges the state faces in 2014, Gov. Jerry Brown (D) said in his State of the State address Jan. 22 to lawmakers in Sacramento....

## *Chesapeake Bay*

### Study Says Stormwater Runoff From Cities, Suburbs a Growing Threat but Remedies Exist

Stormwater runoff from urban and suburban landscapes increasingly threatens efforts to restore the Chesapeake Bay and its tributaries, but strategies to address the problem are available, the Chesapeake Bay Foundation said in a new report....

## *Drilling*

### Appeals Court Says Better Analysis Needed For Lease Sale of Chukchi Sea Oil Prospects

A federal appeals court decision Jan. 22 sent federal regulators back to the drawing board to estimate the potential environmental impacts of oil development in the Chukchi Sea off the northwest coast of Alaska (Native Village of Point Hope...

## *Drilling*

### European Commission Opts for Shale Gas

### Recommendation Rather Than Regulation

European Union countries should not permit hydraulic fracturing, or fracking, for shale gas unless operators comply with a set of criteria designed to prevent environmental harm, the European Commission said in a recommendation published...

### *Water Pollution*

### Alliance Urges EPA to Explicitly Authorize Trading to Meet Water Quality Objectives

A newly formed alliance composed of state and federal officials, representatives from a broad swath of the regulated community and groups representing the financial community is urging the Environmental Protection Agency to explicitly...

### *Water Pollution*

### Court Approves Settlement in Textile Company Lawsuit Ordering River Monitoring

A federal court in Georgia has approved a settlement in a Clean Water Act lawsuit against textile company King America Finishing Inc., ordering the company to pay for the monitoring and protection of the Ogeechee River ecosystem (Ogeechee-Canoochee...

### *Water Pollution*

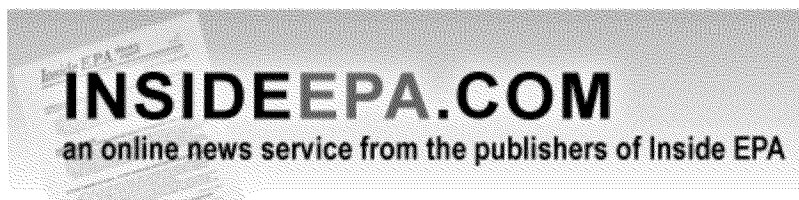
### Mayors Say EPA Grudgingly Accepting Affordability as More Than Median Income

The nation's mayors said the Environmental Protection Agency is slowly coming around to accept that it cannot continue to rely on a median household income threshold as the primary metric for gauging the financial capability of a community...

### *Water Pollution*

### New York Sets \$136 Million Plan to Cut Albany-Area Discharges Into Hudson River

Sewage discharges into the Hudson River from combined sewer overflows will be greatly reduced under a consent order covering Albany, N.Y., and the surrounding area, the state Department of Environmental Conservation said....



Inside EPA's **Risk Policy Report**, 01/24/14

<http://insideepa.com/Inside-EPA/Inside-EPA-01/24/2014/menu-id-67.html>

### As Court Weighs Suit, Industry Fears EPA Stormwater Permit Limits 'Shield'

As a federal appellate court weighs whether dischargers covered by general permits are protected from citizen suits by the Clean Water Act's (CWA) "permit shield," mining and other industry groups are raising concerns that EPA's proposed general permit for stormwater discharges from industrial sites may not provide them with an adequate shield.

Latest Blogs

#### Alaska Senator Opposes Pebble Mine

As he gears up for a tough re-election battle, Sen. Mark Begich (D-AK) is opposing the planned Pebble Mine in his home state, citing EPA's . . .

# Greenwire

**KEYSTONE XL:**

## **Pipeline's southern leg starts up with extra leak-spotting sensors**

Elana Schor, E&E reporter

Published: Wednesday, January 22, 2014

TransCanada Corp. today began shipping crude along the southern leg of the Keystone XL pipeline, drawing jeers from environmentalists, even as it continues to install new external leak-detection sensors at nine points on the 475-mile route.

The extra leak-detection technology -- which TransCanada spokesman Shawn Howard told *Greenwire* was long planned to offer "an additional layer of redundancy in our monitoring" of the Oklahoma-to-Texas pipeline -- comes as Lone Star State landowners begin their own local monitoring effort. That grass-roots initiative is designed to keep a public spotlight on safety along the pipeline that TransCanada rechristened the Gulf Coast Project after President Obama rejected its original application to build KXL in 2012.

Julia Trigg Crawford, the Texas rancher who has taken her battle with TransCanada over the right to build on her land to the state Supreme Court, told reporters today that she and other landowners would be marshaling "the biggest neighborhood watch ever" for KXL's southern leg.

Crawford's contention that locals living near oil pipelines have a better record of spotting leaks than remote control-room monitors or computational technology is borne out by a report delivered to federal regulators last year (*EnergyWire*, Aug. 9, 2013). Despite a 2011 congressional mandate to evaluate its leak-detection regulations, the Pipeline and Hazardous Materials Safety Administration has yet to offer any changes.

TransCanada is installing external temperature sensors at valve sites on the Gulf Coast pipeline, Howard said via email. Those leak detectors are one of four external technologies undergoing laboratory tests under a partnership between TransCanada and another Canadian oil sands pipeline giant plagued by environmental criticism, Enbridge Inc. (*EnergyWire*, Dec. 19, 2013).

The sensors are commonly used to detect oil escaping from pipelines by flagging temperature increases caused by the crude's heat. Their inclusion on KXL's southern leg could affect the ongoing controversy over the still-in-limbo northern portion of the pipeline because the Obama administration is conducting an independent risk review at U.S. EPA's urging that ultimately could recommend the use of external leak detectors in environmentally sensitive areas (*Greenwire*, June 19, 2013).

Asked whether the temperature sensors portended any future leak-detection add-ons for the northern leg of KXL should the Obama administration approve it, Howard avowed that the company is "constantly looking at new technologies and equipment that can make our pipelines even safer." The research partnership with Enbridge, he added, is expected to yield data that the company would need to weigh "before we know if this is a viable addition for our liquid pipelines."

Internal leak-detection technology relies on a steady stream of data transmitted to control rooms that typically monitor pipeline safety from afar, as well as the regular use of robotic sensors known as "smart pigs" that can detect anomalies in steel tubes as they travel through oil conduits. In addition, regulators ask pipeline operators to draft inspection plans for regular aerial or foot patrols to look for leaks.

The heavy nature of the oil sands crude that KXL and the Gulf Coast Project would carry, however, has driven concerns from nonpartisan safety advocates and environmentalists that existing leak-detection rules are insufficient to safeguard against leaks. A National Academy of Sciences report found last year that Canadian oil sands crude is no less dangerous to pipelines than its conventional cousin, but it did little to quell the debate.

Indeed, green groups used the opening of KXL's southern leg to slam the president for fast-tracking one-third of a pipeline that they continue to blast as a spur for significant new greenhouse gas emissions.

Bill McKibben, co-founder of 350.org and a leading oil sands crude opponent, issued a statement calling the pipeline's opening "a shameful day -- and a reminder that the Obama administration has boasted too often about how many pipelines they've built, how much land they've opened to drilling and mining."

Sierra Club Executive Director Michael Brune echoed that notably anti-White House tone today in a statement that vowed his group would help "turn the Obama administration's shortsighted dirty energy policy around."

## OCEANS:

# Sharks, rays threatened by extinction -- study

Published: Wednesday, January 22, 2014

Almost a quarter of the sharks and rays roaming the seas are threatened by extinction, according to research from the International Union for Conservation of Nature.

For more than 20 years, the IUCN, which puts together a Red List of endangered species, has been concerned about the status of sharks and rays. But new research published in the online journal *eLife* quantifies the risks faced by thousands of species of the animals.

Researchers scoured catch reports from various fisheries for their analysis. They found that rays are actually in a worse situation than sharks.

"People know about the global trade in shark fins, but few know that some of the most valuable fins ... used in shark fin soup come from the shark-like rays -- species like sawfishes and wedge fishes and guitarfishes," said Sonja Fordham, founder of Shark Advocates International who contributed to the analysis of the fisheries (Richard Harris, [NPR](#), Jan. 22). -- **WW**

## NATIONAL PARKS:

# Calif. oyster farm intends to ask Supreme Court to take its case

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, January 22, 2014

The embattled Drakes Bay Oyster Co. indicated this week that it will ask the Supreme Court to take up its ongoing fight with the Interior Department to keep its doors open.

The oyster farm, located on California's Point Reyes National Seashore, is challenging Interior's November 2012 decision not to renew its operating permit.

In September, the San Francisco-based 9th U.S. Circuit Court of Appeals ruled 2-1 in favor of Interior, holding that the agency acted within its authority in declining to renew the company's lease.

Earlier this week, the farm asked the 9th Circuit to delay the enforcement of that ruling while it petitions the Supreme Court to take up the case.

In court documents that are likely similar to those the company will submit to the Supreme Court, the company claims there is a good chance the highest court will want to review the lawsuit.

"There is a reasonable probability that the Supreme Court will want to resolve these disputes, and that it will reverse," the company's attorneys wrote.

The dispute surrounding the farm has galvanized the local community, famous chefs and environmentalists. The farm argues that it is actually beneficial to the environment, though more than 55 local and national green groups dispute that claim. Several chefs, including Alice Waters, have filed briefs supporting the farm.

Attorneys for the farm point out that the Supreme Court has frequently taken up environmental cases coming out of the 9th Circuit in recent years. They also contend that there is a split between federal appellate circuits on the National Environmental Policy Act and administrative deference issues presented in the case.

Generally, the farm contends that the agency's decision against renewing its lease was an abuse of discretion. They point to a 2009 appropriations bill that granted the Park Service authority to renew the lease (*Greenwire*, Oct. 21, 2013).

The 9th Circuit rebuffed that argument, however. It held that the legislation gave then-Interior Secretary Kenneth Salazar considerable discretion (*E&ENews PM*, Sept. 3, 2013).

One of the farm's lawyers, Peter Prows, confirmed that the farm will petition the Supreme Court to review the case. The farm must file with the high court within 90 days.

Justices receive thousands of petitions for review every year and take up a tiny percentage. It takes the votes of four justices to grant review. The justices will likely consider the farm's petition later this year.

[Click here](#) to read the farm's motion.

## **GULF SPILL:**

# **Judge gives ex-Halliburton engineer probation as BP tries to reduce liability**

Published: Wednesday, January 22, 2014

A federal judge sentenced former Halliburton Energy Services Inc. engineer Anthony Badalamenti to one year of probation yesterday for deleting data in the aftermath of the 2010 Deepwater Horizon disaster, as BP PLC opened a new legal front in its efforts to limit a massive settlement with residents and businesses in contaminated parts of the Gulf.

Halliburton once provided cement services to BP at the Deepwater Horizon site, and Badalamenti worked for the oil field services company as its cementing technology director. Badalamenti admitted to deleting results from

computer simulations that showed the extent of the oil spill. Badalamenti will be required to perform 100 hours of community service and pay a \$1,000 fine.

Badalamenti, 62, pleaded guilty to the offense late last year (*E&ENews PM*, Oct. 15, 2013).

"I still feel that you're a very honorable man," U.S. District Judge Jay Zainey told Badalamenti. "I have no doubt that you've learned from this mistake."

The sentencing comes as several other BP employees have been ordered to serve jail time for offenses prosecutors say occurred during the oil spill cleanup (Dominic Rushe, *London Guardian*, Jan. 21).

BP also is seeking to limit its financial liabilities over the spill. The company asked the 5th U.S. Circuit Court of Appeals to review a multibillion-dollar settlement with victims of the spill, which the company argues would send hundreds of millions of dollars to companies that were not affected by the disaster. A panel of three appeals court judges previously upheld a U.S. district judge's approval of the settlement (*Greenwire*, Jan. 2).

"If the panel's decision is permitted to stand, it will work a revolution in class-action law in this Circuit, permitting the certification of classes that cannot be certified anywhere else in the country," BP attorneys wrote (Michael Kunzelman, *Associated Press*, Jan. 21). -- SP

## NOAA:

# Watchdog group slams agency's handling of tsunami warning centers

Emily Yehle, E&E reporter

Published: Wednesday, January 22, 2014

*This story was updated at 4:17 p.m. EST.*

An environmental watchdog group is again raising concerns with how the National Oceanic and Atmospheric Administration runs its tsunami warning centers, accusing the agency of a "stealth reorganization" that increases confusion.

Public Employees for Environmental Responsibility released an internal memo today that provides background on NOAA's decision to rename the West Coast/Alaska Tsunami Warning Center as the National Tsunami Warning Center.

The name change, announced with little fanfare in October, "has no bearing on the mission, organization, functional statements, budget or full-time equivalents," according to a [memo](#) last year from Laura Furgione, the deputy director of the National Weather Service. Instead, Furgione wrote that the renaming was for clarity, since the center covers not only the West Coast of the United States and Alaska but also the entire East Coast.

Indeed, in an October [article](#) in the *Anchorage Daily News*, the director of the Alaska center said the name change will make its warnings more effective.



"The old name really caused some problems with people on the East Coast," Paul Whitmore said. "They would see a message coming from the West Coast and Alaska and get rid of it."

But PEER asserts that the change increases confusion and demotes the Pacific Tsunami Warning Center -- the nation's only other facility -- to "secondary status," even though it covers two-thirds of the planet's coastlines.

The group also argues that the name change increases competition between the centers, rather than encouraging collaboration.

"There should be a broader debate before putting all our tsunami warning eggs in one basket," PEER Executive Director Jeff Ruch said. "Tsunami hazard detection is a highly specialized field, and its experts should be at the table when decisions affecting operations are made."

In a statement, NOAA accused PEER of leveling "baseless accusations." The name change, a spokeswoman said, was widely supported as a way to better reflect the scope of the Alaska center's responsibility.

"PEER's mischaracterizations of the status of NOAA's tsunami warning centers undermine public trust in the valuable work of our talented and dedicated staff, whose efforts save lives," she said. "Contrary to PEER's accusation of a downgrade to our tsunami warning center in Hawaii, it retains all of its warning responsibilities in the Pacific, and we are working to expand its warning authority to include the entire Caribbean region with the addition of Puerto Rico and the U.S. Virgin Islands."

In her memo, Furgione emphasized that the name change "in no way relegates the importance of the Pacific Tsunami Warning Center (PTWC) in Hawaii." But it is part of a broader effort to shift responsibility of Puerto Rico and the U.S. Virgin Islands to the Pacific Center; right now, the Alaska Center takes care of such warnings.

"This will be a longer process as we need to ensure all communications and IT requirements are met at PTWC to ensure no possible degradation in service," she wrote. "I expect we will make this switch no earlier than the summer of 2014."

PEER has long criticized how NOAA runs the warning centers, most recently questioning the agency's decision to move the Pacific center to an island in the middle of Pearl Harbor that could be cut off from the mainland during a tsunami. The move was made to reduce costs and improve efficiency (*E&ENews PM*, June 10, 2013).

## **WATER POLLUTION:**

# **Officials ID new chemical in W.Va. spill**

Published: Wednesday, January 22, 2014

West Virginia officials said yesterday a second chemical had leaked at a Freedom Industries-owned chemical storage site earlier this month, potentially posing new complications for the ongoing cleanup effort.

The substance, known as "PPH, stripped," was part of the chemical mix known as crude MCHM that entered the Elk River on Jan. 9.

Freedom Industries President Gary Southern notified the state's Department of Environmental Protection yesterday morning of the new chemical, said Amy Shuler Goodwin, spokeswoman for Gov. Earl Ray Tomblin.

In a statement, West Virginia American Water Co., which operates the region's water distribution network, said chemical experts thought PPH would have been filtered out as the company treated the drinking water. Goodwin, though, said state officials are completing new tests to look for PPH (Kris Maher, *Wall Street Journal*, Jan. 21). --  
**SP**

ClimateWire -- Thu., January 23, 2014 -- [Read the full edition](#)

## 1. POLICY: Transportation planners ponder costs and benefits of stormproofing

Driverless snowplows. Massive tidal barriers. New floodgates to protect subway stations. These are some of the ideas transportation planners are dreaming up to protect America's infrastructure from the onslaught of climate change.

## 2. POLITICS: Gov. Christie loses some of the luster he gained after Superstorm Sandy

A senior senator in New Jersey is criticizing Gov. Chris Christie (R), whose political fame soared in the wake of Superstorm Sandy, for vetoing several bills that sought to protect residents from the impacts of future storm disasters.

### TODAY'S STORIES

## 3. BUSINESS: Automakers say 2014 is 'the moment' for emergence of fuel-cell vehicles

## 4. SCIENCE: Antarctica's peculiar climate appears connected to temperatures in Atlantic Ocean -- study

## 5. POLICY: U.S. Navy prepares for broader operations in a rapidly melting Arctic

## 6. NATIONS: U.N. climate chief praises Europe for blazing path to lower emissions

## 7. CARBON MARKETS: Some backers of E.U. carbon market see conflict with binding renewables targets

## 8. FORESTS: Group urges E.U. not to count land-use emissions as offsets

## 9. TECHNOLOGY: U.S. mayors plan to make cities more energy-efficient and save money -- study

## 10. WATER: World Bank tackles nexus between water and energy shortages

## 11. FINANCE: China should spend billions more to fight climate change, report says

## 12. NEGOTIATIONS: Leaders in Davos push for clean energy to curb climate change

## 13. SPECIES: Mass fish deaths in Texas could increase with climate change

## 14. SPECIES: Warmer Arctic helps some Alaskan geese find better food

E&ETV's OnPoint

## 15. ENERGY POLICY: DOE loan program chief Davidson discusses new round of clean-tech funding

EnergyWire -- Thu., January 23, 2014 -- [Read the full edition](#)

## 1. ELECTRICITY: Renewable energy standard comes under attack in wind-heavy Kan.

In Kansas, home of sprawling wind farms and the Koch brothers, conservative groups and renewable energy advocates are girding for a battle over the state's green power law -- a fight with broad political implications that's drawing interest from far outside the state's borders.

#### THIS MORNING'S STORIES

2. KEYSTONE XL: Protesters mobilize 'biggest neighborhood watch ever' as southern leg opens

3. KEYSTONE XL: Proponents pounce on emails between EPA, enviros on pipeline

4. REGULATION: N.D. changes scenic preservation plan under pressure

5. HYDRAULIC FRACTURING: Calif. drought becomes weapon in fight to stop fracking

6. PEOPLE: Former industry coalition chief opens consulting shop

7. WORKFORCE: Oil and gas firms expect to increase hiring in 2014 -- survey

8. REGULATION: N.D. governor calls for immediate safety standards for crude-carrying rail cars

9. TRANSPORT: Railroad involved in deadly Canada derailment sold at auction

10. ELECTRICITY: Duke Energy warns customers of potential fraud

11. NORTH DAKOTA: Support for oil declines slightly but is still strong -- industry poll

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